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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2199/2012*, **

Communication submitted by:	K.M. (not represented by counsel)
Alleged victim:	The author
State party:	Belarus
Date of communication:	17 September 2012 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 4 October 2012 (not issued in document form)
Date of adoption of decision:	6 April 2018
Subject matters:	Request to provide the author with an official response in his mother tongue; right to seek and receive information; discrimination on the ground of language
Procedural issues:	Level of substantiation of a claim; exhaustion of domestic remedies; State party's failure to cooperate; victim status
Substantive issues:	Right to a fair hearing by an independent and impartial tribunal; right to seek and receive information; right to take part in the conduct of public affairs; right to the equal protection of the law without any discrimination
Articles of the Covenant:	14 (1), 19 (2), 25 (1) and 26
Articles of the Optional Protocol:	1, 2 and 5 (2) (b)

1.1 The author of the communication is K.M., a national of Belarus born in 1970. He claims that the State party has violated his rights under articles 14 (1), 19 (2), 25 (1) and 26 of the Covenant. The Optional Protocol entered into force for the State party on 30 December 1992. The author is not represented by counsel.

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

1.2 On 9 January 2013, pursuant to rule 97 (3) of the Committee's rules of procedure, the State party requested the Committee to examine the admissibility of the communication separately from its merits. On 21 June 2013, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided not to grant the State party's request.

The facts as submitted by the author

2.1 On 15 August 2012, the author filed a written request with the District Electoral Commission of Vitebsk Rural District No. 21 to be allowed to attend the verification of signatures collected in support of candidates nominated for the upcoming elections of deputies to the House of Representatives, the lower chamber of the parliament of Belarus. The request was submitted in Belarusian, which is an official language of Belarus and the author's mother tongue that he uses daily. The author submits that his command of other languages, including Russian, is insufficient. On 17 August 2012, the Chair and the Secretary of the District Electoral Commission responded to him, in a letter written in Russian, stating that his request had been rejected pursuant to article 13 of the Electoral Code, which stipulates the modalities for the presence of observers at District Electoral Commission meetings, and that the Electoral Code made no provision for the presence of "attendees" at such meetings. In the response, it was stated that the author could appeal against the decision to the Central Electoral Commission, in accordance with articles 7 and 20 of the Law on Citizens' and Legal Entities' Applications of 18 July 2011. In order to understand the response, and to be able to appeal against it, the author had to pay for the services of a professional translator.

2.2 On 23 August 2012, the author lodged an appeal against the decision of the District Electoral Commission with the Central Electoral Commission of Belarus.[1] In the appeal, he contested the legality of the decision of the District Electoral Commission and the fact that it had been taken only by the Chair and the Secretary thereof, rather than by a majority of the collective body. He therefore requested the Central Electoral Commission to rule on the re-election of the Chair and the Secretary of the District Electoral Commission, and to bring them to account for the violations that they had committed. The author also requested the Central Electoral Commission to oblige the District Electoral Commission to present a written apology to him for not having replied to his request of 15 August 2012 in Belarusian. As to the reference in the letter of the District Electoral Commission of 17 August 2012 to the modalities of the appeal procedure stipulated in the Law on Citizens' and Legal Entities' Applications, the author stated that, pursuant to article 18 of the same law, a response to an application should be provided in the language of the submission. He noted, however, that according to the response sent to him on 14 August 2012 by the Chair of the Central Electoral Commission,[2] the Law on Citizens' and Legal Entities' Applications did not apply to electoral commissions, since they did not have the legal status of an organization. Therefore, the author concluded in his appeal that either the District Electoral Commission or the Central Electoral Commission was wrong in its interpretation of the applicability of the Law on Citizens' and Legal Entities' Applications to electoral commissions.

2.3 On 27 August 2012, the Chair of the Central Electoral Commission responded to the author's appeal,[3] stating that, pursuant to article 49[1] of the Electoral Code, meetings of the electoral commissions were dedicated to considering appeals against decisions taken by the respective electoral commissions. The Code does not require electoral commissions to consider other types of applications from citizens. For this reason, the District Electoral Commission decision of 17 August 2012 was signed by the Chair and the Secretary thereof, in compliance with the requirements of the Electoral Code. Furthermore, article 13, part 4, of the Electoral Code contains a list of the observers permitted to attend meetings of the

[1] The appeal was written and submitted in Belarusian.

[2] The response in question is unrelated to the author's appeal against the decision of the District Electoral Commission of 17 August 2012.

[3] The response was written and issued in Belarusian.

relevant electoral commission meetings.[4] Since the author was not accredited as an observer to the District Electoral Commission, a lawful decision was taken to reject his request to attend its meetings.

2.4 The Chair of the Central Electoral Commission explained that a reference in the District Electoral Commission's letter of 17 August 2012 to the possibility of appealing against the decision in question to the Central Electoral Commission was, per se, correct, since such a procedure was provided for in article 37, part 7, of the Electoral Code. She noted, however, that a reference in the same letter to the Law on Citizens' and Legal Entities' Applications was incorrect, since the Law did not apply to electoral commissions, due to the fact that they did not have the legal status of an organization. Therefore, the requirement to give a response to an application in the language of the submission, which was stipulated in the Law on Citizens' and Legal Entities' Applications, did not apply to the electoral commissions. For that reason, the author's complaint about the failure by the District Electoral Commission to provide a response to his request of 15 August 2012 in Belarusian was unfounded.

2.5 On 31 August 2012, the author appealed against the decision of the Central Electoral Commission to the Supreme Court of Belarus.[5] In the appeal, he contested the explanation provided by the Chair of the Central Electoral Commission that the Law on Citizens' and Legal Entities' Applications did not apply to electoral commissions. The author also argued that, by responding to his request in Russian, the District Electoral Commission had discriminated against him on the ground of ethnicity (language), in violation of the Constitution and international obligations of Belarus. He further argued that the Electoral Code did not bar bona fide voters from attending meetings of district electoral commissions as observers, and that the Chairs of electoral commissions arbitrarily and artificially restricted access to such meetings. On 6 September 2012, the Supreme Court decided not to hear the author's appeal,[6] with reference to article 247, part 2, of the Code of Civil Procedure.[7] The author submits that he has exhausted all available and effective domestic remedies.

The complaint

3.1 The author claims that the State party has violated his rights under articles 14 (1), 19 (2), 25 (1) and 26 of the Covenant.

3.2 The author maintains that the State party's authorities denied him justice, despite the fact that domestic legislation guarantees that, as a citizen of Belarus, his rights should be protected by competent, independent and impartial courts. He submits that the electoral commissions denied him due access to information relating to the election of deputies to the House of Representatives from Vitebsk Rural Electoral District No. 21, and therefore violated his right to take part in the conduct of public affairs through his freely and openly chosen representative. He claims that the State party has also discriminated against him on the ground of language, and that it failed to protect him from a discriminatory act committed by the District Electoral Commission.

State party's observations on admissibility

4.1 In a note verbale dated 9 January 2013, the State party submitted its observations on the admissibility of the communication. It argued that, despite the fact that the Supreme

[4] The following categories of persons are listed in article 13, part 3 of the Electoral Code: deputies of the House of Representatives, members of the Council of the Republic, deputies of local Councils of Deputies, authorized representatives of the candidates for a position of deputy, representatives of political parties and other public associations, working collectives, citizens' representatives, foreign (international) observers, as well as representatives of the mass media.

[5] The appeal was written and submitted in Belarusian.

[6] The ruling of 6 September 2012 was issued by the Deputy Chair of the Supreme Court in Belarusian.

[7] On 24 August 2012, the Supreme Court refused, pursuant to article 245, part 1, of the Civil Procedure Code, to open civil proceedings concerning the rejection of an application submitted by a group of voters requesting that the author be designated as an observer at meetings of the District Electoral Commission.

Court ruling of 6 September 2012 could not be appealed on cassation, the author had not exhausted all available domestic remedies because he had not appealed against the ruling under the supervisory review procedure. Thus, his communication is inadmissible under articles 2 and 5 (2) (b) of the Optional Protocol.

4.2 The State party also stated that the communication was inadmissible under article 3 of the Optional Protocol, since the author had abused the right of submission by failing to submit to the Committee all documents relevant to his case. In particular, the State party adduces the Supreme Court ruling of 24 August 2012 rejecting the author's request to open civil proceedings (see paragraph 5.4 below),[8] and providing grounds for that rejection. The State party maintains that this ruling was of the utmost importance to the author's communication. However, in its place, he submitted to the Committee the Supreme Court ruling of 6 September 2012, which had been made further to the author's repeated request to open civil proceedings.

4.3 The State party points out that the author filed an appeal with the Supreme Court against the decision of the Central Electoral Commission prior to receiving a copy of the decision, which is dated 27 August 2012.

Author's comments on the State party's observations

5.1 In a letter dated 18 March 2013, the author commented on the observations of the State party, maintaining that he had exhausted all available domestic remedies. The Supreme Court judges who dealt with his case had the competence and standing to consider his complaints concerning the Central Electoral Commission decision. The author submits that an appeal to the Chair of the Supreme Court and to the Prosecutor General of Belarus is a purely bureaucratic procedure that does not guarantee that his civil and political rights will be restored.

5.2 The author reiterates that the State party has discriminated against him on the ground of language and that the domestic courts failed to protect him from the repeated discriminatory acts committed by the District Electoral Commission. He recalls that, since his command of Russian is insufficient, he had to pay for the services of a professional translator in order to understand the response of the Chair of the District Electoral Commission of 17 August 2012.

5.3 The author adds that, on 31 August 2012, he brought a civil action before Zheleznodorozhny District Court of Vitebsk against the Chair and the Secretary of the District Electoral Commission on the same grounds as those summarized in paragraph 2.2 above,[9] claiming 1,559,000 Belarusian roubles in compensation for material and moral damages. On 19 October 2012, Zheleznodorozhny District Court rejected the author's claims,[10] finding that the Law on Citizens' and Legal Entities' Applications, pursuant to which a response to an application should be given in the language of the submission, did not apply to district electoral commissions. On 6 December 2012, the College Board on Civil Cases of Vitebsk Regional Court dismissed[11] the author's appeal of 6 November 2012 against the decision of Zheleznodorozhny District Court,[12] stating, inter alia, that the response of the District Electoral Commission had been given in an official language of Belarus.[13]

5.4 The author adduces a Russian translation of the Supreme Court ruling of 24 August 2012 (see paragraph 4.2 above). The ruling refers to his appeal against the decision of the Central Electoral Commission.[14] In that appeal, the author stated that, on an unspecified date, a group of voters sent an application to the District Electoral Commission requesting

[8] The ruling was written and issued in Belarusian.

[9] The civil action of 31 August 2012 was submitted by the author in Belarusian.

[10] The rejection decision was written and issued in Belarusian.

[11] The dismissal decision was written and issued in Belarusian.

[12] The appeal was written and submitted in Belarusian.

[13] Reference is made to article 17 of the Constitution of Belarus.

[14] The dates of the appeal and the decision are not specified.

that the author be designated as an observer at District Electoral Commission meetings.[15] The Chair and the Secretary of the District Electoral Commission issued a response written in Russian rejecting that request, in violation of the Law on Citizens' and Legal Entities' Applications. Further to the rejection, by the Central Electoral Commission, of the author's appeal against the decision of the District Electoral Commission, he submitted an appeal to the Supreme Court. On 24 August 2012, the Supreme Court refused to open civil proceedings pursuant to article 245, part 1, of the Civil Procedure Code, finding that the Electoral Code did not provide for the possibility to appeal in court the fact that the response of the District Electoral Commission had been given in Russian. The Supreme Court ruling stated that it could not be appealed on cassation.

5.5 In conclusion, the author respectfully requests the Committee to declare his communication admissible, and to find that Belarus has violated his rights under articles 14 (1), 19 (2), 25 (1) and 26 of the Covenant. He adds that the Committee should recommend that the State party restore the rights that have been violated in his case, and provide him with an effective remedy and with financial compensation for moral damages.

State party's additional observations

6.1 In a note verbale of 22 April 2015, the State party submitted that, when it acceded to the Optional Protocol, it agreed to recognize the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by the State party of any of the rights protected by the Covenant. The State party adds, however, that it acts on the assumption that, according to a well-established principle of international law, individuals must avail themselves of all domestic remedies prior to having recourse to international mechanisms. Pursuant to articles 2 and 5 (2) (b) of the Optional Protocol, only individuals who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration. The State party refers to article 61 of the Constitution, in which it is stipulated that, in line with the international treaties ratified by the State party, all individuals, after exhausting existing domestic remedies, have the right to submit complaints to international organizations in order to protect their rights and freedoms.

6.2 The State party recalls that, at the time of submission of the present communication, the author did not appeal against the Supreme Court ruling under the supervisory review procedure, and did not file a request with the Prosecutor General's Office to initiate supervisory review proceedings regarding his case.

6.3 The State party notes with regret that the Committee's interpretation of articles 2 and 5 of the Optional Protocol is arbitrary and abusive, does not stem from the provisions of the Covenant and its Optional Protocol, and is contrary to the principles of interpretation established in the Vienna Convention on the Law of Treaties. The State party submits that any further work undertaken by the Committee on the present communication will be viewed by it as encouraging the author to take actions that are contrary to the Optional Protocol and the Constitution of Belarus. Therefore, the State party ceases any further correspondence with the Committee regarding the present communication.

Additional comments from the author

7.1 On 23 June 2015, the author maintained that he had exhausted all available domestic remedies. He added that his request to initiate supervisory review proceedings regarding his case had been rejected by the Supreme Court,[16] thus proving once again that the Supreme Court, in its capacity as a supervisory body, treated that type of request in a perfunctory manner, regardless of whether the lower courts had complied with the procedural requirements. Since issues of law, including the restoration of an individual's civil and political rights, fall outside the scope of the supervisory review procedure in Belarus, the author argues that the procedure does not constitute an effective remedy. The author

[15] No further information is provided.

[16] No further details provided by the author.

submits that, for that same reason, he has not filed a request with the Prosecutor General's Office to initiate supervisory review proceedings regarding his case.

7.2 The author reiterates his earlier claims that the State party violated his rights under articles 14 and 26 of the Covenant.

Issues and proceedings before the Committee

Lack of cooperation by the State party

8.1 The Committee notes the State party's assertion that there are no legal grounds for the consideration of the author's communication, insofar as it was registered in violation of the provisions of the Optional Protocol, that any further work undertaken by the Committee on the present communication will be viewed by the State party as encouraging the author to take actions that are contrary to the Optional Protocol and the Constitution of Belarus, and that the State party ceases any further correspondence with the Committee regarding the present communication.

8.2 The Committee observes that, by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (preamble and article 1 of the Optional Protocol). Implicit in a State's adherence to the Optional Protocol is the undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications and, after examination thereof, to forward its Views to the State party and the individual (art. 5 (1) and (4)). It is incompatible with those obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of a communication and in the expression of its Views.[17] It is up to the Committee to determine whether a case should be registered. The Committee observes that, by failing to accept the competence of the Committee to determine whether a communication should be registered and by declaring beforehand that it will not accept the Committee's determination of the admissibility or the merits of the communication, the State party has violated its obligations under article 1 of the Optional Protocol.[18]

Considerations of admissibility

9.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

9.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

9.3 The Committee notes the State party's argument that, at the time of submission of the present communication, the author failed to appeal against the Supreme Court ruling under the supervisory review procedure and to file a request with the Prosecutor General's Office to initiate supervisory review proceedings regarding his case. The Committee recalls its jurisprudence, according to which a petition to a prosecutor's office requesting a review of court decisions that have taken effect does not constitute a remedy that has to be exhausted for the purposes of article 5 (2) (b) of the Optional Protocol.[19] It also considers that requests for supervisory review, to the Chair of a court, of court decisions that have entered into force and that depend on the discretionary power of a judge constitute an extraordinary remedy, and that the State party must show that there is a reasonable prospect

[17] See, for example, *Levinov v. Belarus* (CCPR/C/105/D/1867/2009, 1936, 1975, 1977-1981, 2010/2010), para. 8.2; and *Poplavny v. Belarus* (CCPR/C/115/D/2019/2010), para. 6.2.

[18] See, for example, *Korneenko v. Belarus* (CCPR/C/105/D/1226/2003), para. 8.2; and *Turchenyak et al. v. Belarus* (CCPR/C/108/D/1948/2010 and Corr.1), para. 5.2.

[19] See, for example, *Alekseev v. Russian Federation* (CCPR/C/109/D/1873/2009), para. 8.4; *Lozenko v. Belarus* (CCPR/C/112/D/1929/2010), para. 6.3; and *Sudalenko v. Belarus* (CCPR/C/115/D/2016/2010), para. 7.3.

that such requests would provide an effective remedy in the circumstances of the case.[20] In the present case, the Committee notes that the State party has not provided any further observations following the rejection, by the Supreme Court, of the author's request to initiate supervisory review proceedings regarding his case. Accordingly, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

9.4 The Committee notes the author's statement that, in violation of article 19 (2) of the Covenant, the electoral commissions denied him due access to information relating to the election of deputies to the House of Representatives from Vitebsk Rural Electoral District No. 21, thus violating his right under article 25 (1) of the Covenant to take part in the conduct of public affairs through his freely and openly chosen representative. The Committee also notes the justification provided by the District Electoral Commission and the Central Electoral Commission, in their decisions of 17 August 2012 and 27 August 2012 respectively, for rejecting the author's request to attend the verification of signatures collected in support of candidates nominated for the elections of deputies to the House of Representatives (see paragraphs 2.1 and 2.3 above). The Committee further notes that, although the Supreme Court ruling of 24 August 2012 refers to the rejection of an application sent by a group of voters to the District Electoral Commission requesting that the author be designated as an observer at meetings of the District Electoral Commission (see, para. 5.4 above), the author's communication to the Committee does not contain any additional information or evidentiary documentation concerning this separate set of legal proceedings, and its possible link with the proceedings related to the rejection of the author's request to attend the verification of signatures collected in support of candidates nominated for the elections of deputies to the House of Representatives. In the circumstances, the Committee finds the author's claims under articles 19 (1) and 25 (1) of the Covenant to be insufficiently substantiated for the purposes of admissibility, and declares this part of the communication inadmissible, under article 2 of the Optional Protocol.

9.5 The Committee notes the author's claims under articles 26 and 14 (1) of the Covenant that, by responding to his request in Russian, the District Electoral Commission discriminated against him on the ground of language, and that the domestic courts failed to protect him from repeated discriminatory acts committed by the District Electoral Commission. The Committee recalls in this context that, for a person to claim to be a victim of a violation of a right protected by the Covenant, he or she must show either that an act or omission of the State party has already adversely affected his or her enjoyment of such right, or that there is a real threat of such result.[21] The Committee observes that, according to the information available on file, the author was able to submit all of his written requests and appeals to the electoral commissions and courts in Belarusian, thus exercising his right to express himself in a language of his choice without any restrictions or limitations.[22] The Committee also observes that, although the Central Electoral Commission and the courts took the position that, under domestic law, a requirement to give a response to the author's request in the language of the submission, i.e. Belarusian, did not apply to the electoral commissions, the decisions of the Central Electoral Commission on the author's appeals were, in fact, issued in Belarusian. Furthermore, all decisions of the domestic courts on the author's appeals were also issued in Belarusian.[23] On the basis of the above considerations, and after careful examination of the arguments and materials before it, the Committee considers that the author has not shown that he has the status of a "victim", within the meaning of article 1 of the Optional Protocol, of an alleged violation of his rights under articles 14 (1) and 26 of the Covenant, and this part of the communication is therefore inadmissible under article 1 of the Optional Protocol.

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[20] See, for example, *Sekerko v. Belarus* (CCPR/C/109/D/1851/2008), para. 8.3; *Protsko and Tolchin v. Belarus* (CCPR/C/109/D/1919-1920/2009), para. 6.5; *Schumilin v. Belarus* (CCPR/C/105/D/1784/2008), para. 8.3; and *P.L. v. Belarus* (CCPR/C/102/D/1814/2008), para. 6.2.

[21] See *Bordes and Temeharo v. France* (CCPR/C/57/D/645/1995), para. 5.4.

[22] See *Ballantyne, Davidson and McIntyre v. Canada* (CCPR/C/47/D/359/1989 and 385/1989/Rev.1), para. 11.4.

[23] See footnotes 7, 9 and 11–12 above.

10. The Committee therefore decides:

(a) That the communication is inadmissible under articles 1 and 2 of the Optional Protocol;

(b) That the present decision shall be transmitted to the State party and to the author of the communication.